

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG**

ZACHARY KNOTTS and ELLEN HEINE,

Plaintiffs,

v.

**BOARD OF DIRECTORS OF JW RUBY
MEMORIAL HOSPITAL; CHRISTINE S.
VAGLIENTI, ESQ.; SHONNETTE J.
KINGSTON; ADAM BAUS; THE WV
BOARD OF MEDICINE; and JOHN AND
JANE DOE 1 THROUGH 10.**

Defendants.

**CIVIL ACTION NO.): 1:21-CV-50
(JUDGE KLEECH)**

**REPORT AND RECOMMENDATION RECOMMENDING
THAT COMPLAINT BE DISMISSED WITHOUT PREJUDICE**

This matter is before the undersigned pursuant to referral from the presiding District Judge. On April 19, 2021, the *pro se* Plaintiffs filed a Complaint to initiate this action. Plaintiffs named the following Defendants: Board of Directors of J.W. Ruby Memorial Hospital; Christine S. Vaglienti, Esq.; Shonnette J. Kingston; Adam Baus; The WV Board of Medicine; and John and Jane Doe 1 through 10.

Plaintiffs have not served the complaint on any Defendant in this matter in the timeframe required by the Federal Rules of Civil Procedure. Importantly, “[i]f a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m) (emphasis added).

Thus, on August 2, 2021, the undersigned issued an Order to Show Cause because Plaintiffs failed to serve the Complaint within 90 days of filing it. Specifically, the Order to Show Cause directed Plaintiffs to show cause, within fourteen (14) days from receipt of the Order, why the case should not be dismissed without prejudice as to all Defendants. [ECF No. 11]. The record shows that the Order to Show Cause was sent to each respective Plaintiff by certified mail, return receipt requested, on August 2, 2021. [ECF No. 11-1]. The record further shows attempted delivery of unclaimed correspondence containing the Order to Show Cause to Plaintiff Heine on or about August 6, 2021. [ECF No. 16]. By un-numbered docket entry of September 24, 2021, the record also shows delivery of correspondence containing the Order to Show cause to Plaintiff Knotts' address of record on August 6, 2021. In any event, to date, there has been nothing to indicate that the Complaint has been served on any Defendant, nor has there been any response by either Plaintiff to the Order to Show Cause.

Thus, based on the foregoing, the undersigned **RECOMMENDS** that the Complaint be **DISMISSED** without prejudice.

Any party have fourteen (14) days (filing of objections) and then three days (mailing/service) from the date of the filing of this Report and Recommendation to file with the Clerk of the Court **specific written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection.** A copy of such objections should also be submitted to the Honorable Thomas Kleeh, United States District Judge. Objections shall not exceed ten (10) typewritten pages or twenty (20) handwritten pages, including exhibits, unless accompanied by a motion for leave to exceed the page limitations, consistent with LR PL P 12.

Failure to timely file written objections to the Report and Recommendation as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk to send a copy of this Order to the *pro se* Plaintiffs by certified mail, return receipt requested, to their last known addresses as shown on the docket.

DATED: September 24, 2021.

A handwritten signature in black ink, appearing to read 'Michael John Aloi', written over a horizontal line.

MICHAEL JOHN ALOI
UNITED STATES MAGISTRATE JUDGE